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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,961	02/25/2004	David R. Clark	555255012729	4125
89441	7590	05/17/2011	EXAMINER	
Jones Day (RIM) - 2N North Point 901 Lakeside Avenue Cleveland, OH 44114			ADDY, ANTHONY S	
			ART UNIT	PAPER NUMBER
			2617	
			NOTIFICATION DATE	DELIVERY MODE
			05/17/2011	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/786,961	<b>Applicant(s)</b> CLARK ET AL.	
	<b>Examiner</b> ANTHONY ADDY	<b>Art Unit</b> 2617	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2011.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 56-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 56-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This action is in response to applicant's amendment filed on March 07, 2011.

Claims 56-69 are pending in the present application.

### ***Response to Arguments***

2. Applicant's arguments with respect to **claims 56-69** have been considered but are moot in view of the new ground(s) of rejection. Arguments are directed to newly added limitations and the new ground(s) of rejection based on the newly added limitations follow below.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claims 66 and 68** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 66, applicant recites the limitation "the minimum amount" on lines 3-4 of claim 66, however there is insufficient antecedent basis for this limitation in the claim.

With respect to claim 68, applicant recites the limitation "the remote storage device" on line 1 of claim 68, however there is insufficient antecedent basis for this limitation in the claim.

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 56, 57, 62, 63, 64, 68 and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Gustafson et al., U.S. Publication Number 7,725,889 (hereinafter Gustafson)** and further in view of **Mittelstadt et al., U.S. Patent Number 6,389,280 (hereinafter Mittelstadt)**.

Regarding claim 56, Gustafson teaches a method of updating a mobile device (*e.g., mobile handset 107*) having a baseline configuration stored (*e.g., an existing (old) update agent*) in a mobile device memory (*111*) (see col. 3, lines 58-67, col. 4, lines 42-60 and figs. 1 & 2A), comprising:

storing, in a memory (*111*) of the mobile device (*i.e., the mobile handset 107*), a baseline mobile device configuration (*i.e., the existing (old) update agent*) (see col. 4, lines 51-54);

transmitting, from the mobile device to an update management computing device (*e.g., management server 109*), a request for update data (*i.e., reads on the mobile handset retrieves an update package from the management server*) (see col. 3, lines 30-33), the update data including an identification of a baseline mobile device configuration and an updated mobile device configuration (*i.e., the update package contains information needed to upgrade software/firmware from one version to another*) (see col. 3, lines 24-27);

receiving, at the mobile device (*107*), the update data (*i.e., the update package*) from the update management computing device (*109*) in response to the transmitted request for update

data (*i.e., the mobile handset retrieving an update package from the management server*) (see col. 3, lines 30-33);

in response to receiving the update data from the update management computing device, storing the update data in the mobile device memory (see col. 3, lines 44-53); and

during initialization of the mobile device (see col. 4, lines 21-24 and fig. 2A; step 209);

evaluating the update data to determine whether it contains valid update data (see col. 3, lines 58-62, col. 4, lines 21-32 and fig. 2A; step 211);

if the update data is determined not valid, then reverting to the baseline mobile device configuration (*i.e., interpreted and read on the teaching that if the mobile handset determines that an update is not needed, a regular startup of the mobile handset may be initiated*) (see col. 4, lines 28-32);

if the update data is determined valid (*i.e., if an updated is needed*),

prompting a selection between the baseline mobile device configurations and the updated mobile device configuration (*i.e., reads on the teaching that if it is determined that the update agent needs to be updated, the mobile handset may determine which update agent should be used: the updated update agent (new) or the old update agent that may be available in the backup section of a memory*) (see col. 4, lines 42-53 and fig. 2A; step 219);

accepting the updated mobile device configuration if the updated mobile device configuration is selected (see col. 4, lines 56-60 and fig. 2A; step 219);

reverting to the baseline mobile device configuration if the baseline mobile device configuration is selected (see col. 4, lines 54-67 and fig. 2A; step 225).

Gustafson fails to explicitly prompting a manual selection between the baseline mobile device configurations and the updated mobile device configuration; accepting the updated mobile device configuration if an input is received selecting the updated mobile device configuration; reverting to the baseline mobile device configuration if an input is received selecting the baseline mobile device configuration.

In an analogous field of endeavor, Mittelstadt teaches a mobile telephone can be configured to intelligently implement new configurations instead of merely reverting to the existing configuration (see col. 2, lines 11-15). For example, Mittelstadt teaches if the user selects one of the display menus, the menu logic puts the selected menu on display, wherein the selected menu includes a list of configurations (see col. 37-40). According to Mittelstadt, if the user selects one of the configurations before a time out occurs, then the configuration logic implements the new configuration, and if the time-out logic times-out before a new configuration is selected, then the configuration logic implements the specified configuration for a time-out from that menu (see col. 3, lines 40-45). Mittelstadt further teaches the specified configuration could be either the existing configuration or a new configuration intelligently selected by the user for the given menu time-out (see col. 3, lines 45-48).

It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to modify Gustafson with the teachings of Mittelstadt, in order to configure a mobile telephone to manually select from a menu either a new configuration or an existing configuration instead of merely reverting to the existing configuration as taught by Mittelstadt (see col. 2, lines 9-15).

Regarding claim 63, Gustafson teaches a mobile device (*e.g., mobile handset 107*) (see fig. 1) comprising: one or more processors (115 & 117); one or more memory locations (111 & 125); and update manager (*e.g., update agent 113*) software stored on the one or more memory devices (111) and executable by the one or more processors (see col. 3, lines 44-51 and fig. 1), when executed the update manager software being configured to:

store, in a memory (111) of the mobile device (*i.e., the mobile handset 107*), a baseline mobile device configuration (*i.e., the existing (old) update agent*) (see col. 4, lines 51-54);

transmit, to an update management computing device (*e.g., management server 109*), a request for update data (*i.e., reads on the mobile handset retrieves an update package from the management server*) (see col. 3, lines 30-33), the update data including an identification of a baseline mobile device configuration and an updated mobile device configuration (*i.e., the update package contains information needed to upgrade software/firmware from one version to another*) (see col. 3, lines 24-27);

receive the update data (*i.e., the update package*) from the update management computing device (109) in response to the transmitted request for update data (*i.e., the mobile handset retrieving an update package from the management server*) (see col. 3, lines 30-33);

in response to receiving the update data from the update management computing device, store the update data in the mobile device memory (see col. 3, lines 44-53); and

during initialization of the mobile device (see col. 4, lines 21-24 and fig. 2A; step 209):

evaluate the update data to determine whether it contains valid update data (see col. 3, lines 58-62, col. 4, lines 21-32 and fig. 2A; step 211);

if the update data is determined not valid, then revert to the baseline mobile device configuration (*i.e., interpreted and read on the teaching that if the mobile handset determines that an update is not needed, a regular startup of the mobile handset may be initiated*) (see col. 4, lines 28-32);

if the update data is determined valid (*i.e., if an updated is needed*) then, prompt a selection between the baseline mobile device configurations and the updated mobile device configuration (*i.e., reads on the teaching that if it is determined that the update agent needs to be updated, the mobile handset may determine which update agent should be used: the updated update agent (new) or the old update agent that may be available in the backup section of a memory*) (see col. 4, lines 42-53 and fig. 2A; step 219);

accept the updated mobile device configuration if the updated mobile device configuration is selected (see col. 4, lines 56-60 and fig. 2A; step 219);

revert to the baseline mobile device configuration if the baseline mobile device configuration is selected (see col. 4, lines 54-67 and fig. 2A; step 225).

Gustafson fails to explicitly prompt a manual selection between the baseline mobile device configuration and the updated mobile device configuration; accept the updated mobile device configuration if an input is received selecting the updated mobile device configuration is selected; revert to the baseline mobile device configuration if an input is received selecting the baseline mobile device configuration is selected.

In an analogous field of endeavor, Mittelstadt teaches a mobile telephone can be configured to intelligently implement new configurations instead of merely reverting to the existing configuration (see col. 2, lines 11-15). For example, Mittelstadt teaches if the user

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selects one of the display menus, the menu logic puts the selected menu on display, wherein the selected menu includes a list of configurations (see col. 37-40). According to Mittelstadt, if the user selects one of the configurations before a time out occurs, then the configuration logic implements the new configuration, and if the time-out logic times-out before a new configuration is selected, then the configuration logic implements the specified configuration for a time-out from that menu (see col. 3, lines 40-45). Mittelstadt further teaches the specified configuration could be either the existing configuration or a new configuration intelligently selected by the user for the given menu time-out (see col. 3, lines 45-48).

It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to modify Gustafson with the teachings of Mittelstadt, in order to configure a mobile telephone to manually select from a menu either a new configuration or an existing configuration instead of merely reverting to the existing configuration as taught by Mittelstadt (see col. 2, lines 9-15).

Regarding claims 57 and 64, Gustafson in view of Mittelstadt teaches all the limitations of claims 56 and 63. In addition, Gustafson teaches a method, further comprising: determining, during initialization of the mobile device, whether an update flag is set (*i.e., the availability of update packages may be recorded in status information that may be stored in memory of the mobile handset, and upon initialization of the mobile handset, the mobile handset may determine whether there is a need to execute the update agent based on the status information*) (see col. 3, lines 52-62).

Regarding claims 62 and 69, Gustafson in view of Mittelstadt teaches all the limitations of claims 56 and 63. In addition, Gustafson teaches a method, wherein the updating the mobile

device with the received update data further comprises copy-on-write of stored baseline configuration data stored into the available memory of the mobile device (see col. 3, lines 52-55).

Regarding claim 68, Gustafson in view of Mittelstadt teaches all the limitations of claim 63. In addition, Gustafson teaches wherein the remote storage device comprises the update management computing device (see col. 3, lines 23-26 & 52-55 and fig. 1).

7. **Claims 58 and 65** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Gustafson et al., U.S. Publication Number 7,725,889 (hereinafter Gustafson)** and in view of **Mittelstadt et al., U.S. Patent Number 6,389,280 (hereinafter Mittelstadt)** as applied to claims 57 and 64 above, and further in view of **Chen et al., U.S. Publication Number 2005/0114852 A1 (hereinafter Chen)**.

Regarding claims 58 and 65, Gustafson in view of Mittelstadt teaches all the limitations of claims 57 and 64, but fails to explicitly teach if the update flag is not set, then reverting to the baseline mobile device configuration; and if the update flag is set, then proceeding to the evaluating step.

In an analogous field of endeavor, Chen teaches when an electronic device is initialized, an update status indicator is evaluated to determine whether an update package is present, if no update package is present and/or no update is currently to be performed, the electronic device may initiate normal operation (see p. 9 [0122]). Chen further teaches, if an update package is detected based upon evaluation of the update status indicator, the update agent may be validated, and if the update agent is determined to be valid, i.e., operable and/or un-corrupted, the update

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may proceed to branch to the update agent, wherein the update may be performed (see p. 9 [0123]).

It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to modify Gustafson and Mittlestadt with the teachings of Chen, in order to indicate that a software update is present and whether the software to be updated is valid and capable of being updated as taught by Chen (see p. 1 [0012-0013]).

8. **Claims 59-61, 66 and 67** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Gustafson et al., U.S. Publication Number 7,725,889 (hereinafter Gustafson)** as applied to claims 56 and 63 above, and further in view of **O'Neill et al., U.S. Publication Number 2004/0068721 A1 (hereinafter O'Neill)**.

Regarding claim 59 and 66, Gustafson in view of Mittlestadt teaches all the limitations of claim 56 and 63, but fails to explicitly teach identifying data stored in a mobile device memory that may be purged to make available a minimum threshold amount of memory in the mobile device memory; determining whether the identified data is also stored on a remote storage device accessible by the mobile device over a communication; based on a determination that the identified data is not stored on the remote storage device, transmitting the identified data to the remote storage device for storage; and purging the identified data from the mobile device memory.

In an analogous field of endeavor, O'Neill teaches a download agent of a wireless communication device employs an upload agent to remove portions of existing software from non-volatile or volatile memory of a wireless communication device, in order to free up memory

space for proper processing of downloaded software updates (see p. 5 [0044]). According to O'Neill, such removed portions of software may be selectively reinstated later, as necessary, in order to restore any functionality associated with the wireless communication device prior to an update process, and the removed portions may be temporarily stored remotely within other types of storage devices located within a distribution environment (see p. 5 [0044]). O'Neill further teaches reshuffling portions of existing software frees up memory space for effectively processing of downloaded software updates during the software update process (see p. 5 [0044]).

It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to apply the teachings of O'Neill to Gustafson and Mittlestadt for the purpose of realizing the aforesaid advantage.

Regarding claims 60 and 67, the combination of Gustafson, Mittlestadt and O'Neill teaches all the limitations of claims 59 and 66. The combination of Gustafson, Mittlestadt and O'Neill further teaches transmitting a request from the mobile device to the remote storage device for transmission of the identified data from the remote storage device to the mobile device; receiving the identified data from the remote storage device in response to the transmitted request; and storing the identified data in the mobile device memory (see *O'Neill*, p. 5 [0044] and p. 6 [0049]).

Regarding claim 61, the combination of Gustafson, Mittlestadt and O'Neill teaches all the limitations of claim 60. The combination of Gustafson, Mittlestadt and O'Neill further teaches wherein the remote storage device comprises the update management computing device (see *Gustafson*, col. 3, lines 23-26 & 52-55 and *O'Neill*, p. 5 [0044]).

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANTHONY ADDY whose telephone number is (571)272-7795. The examiner can normally be reached on Mon-Thur 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamran Afshar can be reached on 571-272-7796. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony S Addy/  
Primary Examiner, Art Unit 2617